same property in an action against the ostensible partners. The actual decision in *Ex parte Hayman* was that the creditors of the ostensible firm, on the bankruptcy of its members, should be preferred as to the property used in the business to the separate creditors of the actual owner; but the decision is placed squarely on the statutory doctrine of "reputed ownership." Those cases in this country which reach the same result (*Kelly* v. *Scott*, 49 N. Y. 595; *Thayer* v. *Humphrey*, 64 N. W. Rep. 1007 [Wis.]) are not to be justified on statutory grounds, and are therefore open to criticism. The recent case of *Broadway National Bank* v. *Wood*, 43 N. E. Rep. 100 (Mass.), correctly holds that, on the insolvency of the true owner of property used in the business of an ostensible firm, the firm creditors are not entitled to any preference. If, however, the court means to imply that firm creditors, even by a prior attachment of this property, could get no priority, it appears to run counter to a previous Massachusetts decision (*Lord* v. *Baldwin*, 6 Pick. 348), where an attaching creditor of the ostensible owner was preferred to a subsequently attaching creditor of the true owner.

Other authorities for the view that, in the case of an ostensible partnership, a prior attaching creditor, whether joint or separate, gets a preference over a subsequently attaching creditor, are *Hillman* v. *Moore, supra*; *York County Bank's Appeal*, 32 Pa. St. 446; *Grabenheimer* v. *Rindskobb Bros.*, 64 Texas, 49; (but see *Baylor County* v. *Craig*, 69 Texas, 330). In *Van Kleeck* v. *McCabe*, 87 Mich. 599, where the creditors of the ostensible firm were given preference as to the ostensible firm assets, it is not clear whether the attachment by firm creditors preceded the assignment for benefit of creditors, made by the actual owner.

Extra-Judicial Opinions. — "Each branch of the legislature, as well as the Governor and Council, shall have authority to require the opinions of the justices of the Supreme Judicial Court upon important questions of law, and upon solemn occasions. This provision was inserted in the Constitution of Massachusetts in 1780, and has been since embodied in substantially the same terms in the Constitutions of Maine, New Hampshire, Rhode Island, Florida, Colorado, and South Dakota.

The courts have interpreted these provisions as intended to secure to the executive and the legislature a reliable source of legal advice, and, with two exceptions (see 70 Me. 583; 12 Col. 466), have universally held that opinions given in accordance with them were purely advisory, and binding neither as decisions nor as precedents. Such opinions, however, place a court in a difficult position, and have been given only with extreme reluctance (see 63 Mass. 604). The opinion must be given without a hearing of the parties, and without the assistance of the research and argument of counsel. Admitting that it is purely advisory, it is an official act, and can hardly fail to be prejudicial to parties adversely interested, and to influence the officials of lower tribunals, as well as to bias the subsequent opinions of the judges themselves if the question comes up for actual decision. Perhaps the most cogent objection to her practice is that it gives the other departments of the government authority to impose upon the judiciary duties not within the scope of their jurisdiction. On this ground a Minnesota statute authorizing advisory opinions was held unconstitutional (10 Minn. 78).

Where the requirement is embodied in the Constitution, however, it

would seem that the court has no alternative but to give the requested opinion. The recent refusal, therefore, by the Supreme Court of South Dakota (66 N. W. Rep. 310) to give an opinion as required by the Constitution is at first rather startling, though not entirely unprecedented. Once before the South Dakota court has declined to give an extra-judicial opinion (54 N. W. Rep. 650), and there is a record of a similar refusal by the Colorado court (12 Col. 466). The first refusal by the Massachusetts court seems to have been in 1787. A memorial to the General Court by the French Consul at Boston, dated June 1, 1787, says, "the Legislature referred the Consideration thereof to the Supreme Court for their Opinion, who for Substantial Reasons declined giving an Extra-judicial Opinion." The Massachusetts Reports contain the records of three more refusals. (See *Answers of the Justices*, 122 Mass. 600; 148 Mass. 623; 150 Mass. 598.) In most of these instances the courts have declined to construe an existing statute, and such refusals have been rested on the ground that the question was likely to come before them for actual adjudication. It is submitted that the same reasons would apply for refusing to render an opinion on the constitutionality of pending legislation, but such opinions have invariably been given. The courts find justification for their refusals in the general language of the Constitutions, and while admitting the right of the other departments to call for opinions, assert the province of the judiciary to decide whether the occasion is one intended to be covered by the Constitution. (See 150 Mass. 598.)

It is submitted that an additional provision to the effect that advisory opinions be considered as personal rather than official, and thus kept from going on the records, would relieve the system of most of its objectionable features, and retain substantially all of its benefits.

NATURE OF THE RIGHTS IN A DEAD BODY. — In the case of *Bogert* v. *City of Indianapolis*, 13 Ind. 134, there is a curious *dictum* to the effect that the bodies of the dead belong, as property, to the surviving relatives in the order of inheritance, and that they have the right to dispose of them as such. Nowhere else has the law relating to dead bodies assumed quite so commercial a character. To regard a corpse as a piece of property shocks the sensibilities of the average man. The common law did not regard it as such, nor is it generally so regarded to-day. Yet that the surviving relatives, before burial of the body, have a right of some sort which the law will protect, is undeniable.

The novel question of a wife's right to recover damages for the unlawful dissection of her husband's body before burial arose, for the first time, in *Larson* v. *Chase*, 47 Minn. 307, commented on in 5 HARVARD LAW REVIEW, 285. The same question recently came before the Supreme Court of New York in *Foley* v. *Phelps*, 37 N. Y. Supp. 471. In both cases it was very justly held that the wife could recover. The only difficulty arises in determining the nature of the right that has been infringed. In *Pierce* v. *Proprietors of Swan Point Cemetery*, 10 R. I. 227, it was denominated a quasi-property right. This, of course, does not solve the difficulty. In *Foley* v. *Phelps*, *supra*, a more exact definition was attempted. The court, following substantially the doctrine of *Larson* v. *Chase*, *supra*, declared that a surviving wife is entitled to the possession of the body of her deceased husband, in the same condition as when